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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of Ameritech	)	
For Forbearance From Enforcement of	)	CC Docket No. 98-65
Section 275(a) of the Communications	)	
Act of 1934, As Amended	)	

AMERITECH'S PETITION FOR FORBEARANCE

Pursuant to Section 10 of the Communications Act of 1934, as amended (the "Communications Act" or the "Act"), 47 U.S.C. § 160, Ameritech Corporation ("Ameritech"), including its subsidiary SecurityLink from Ameritech, Inc. ("SFA") (formerly known as Ameritech Monitoring Services, Inc.), hereby requests that the Commission forbear from the enforcement of Section 275(a) of the Act, 47 U.S.C. § 275(a). The requested forbearance would apply both to alarm monitoring service transactions already completed and to future transactions by Ameritech.

Summary

Ameritech demonstrates in this petition that the requested forbearance is warranted because enforcement of Section 275(a) is (1) not necessary to insure that Ameritech's alarm monitoring rates and practices are just and non-discriminatory, (2) not necessary to protect consumers, and (3) not in the public interest.

There is no question that Ameritech's alarm monitoring services are subject to competitive market forces in all areas, including its in-region states. In addition, Ameritech has no market power in the national alarm monitoring market, since it has less than a 7% market share nationally. Nor could Ameritech successfully engage in unjust or unreasonably discriminatory practices against competitors. The Commission has consistently recognized that in such circumstances market forces by themselves are sufficient to ensure that rates and practices are just, reasonable and non-discriminatory.

The Commission has also consistently found that where application of a particular Communications Act provision is not necessary to ensure just and reasonable rates and charges, such application is also not necessary for the protection of consumers. It should reach the same conclusion here, because market forces, the Commission's administration of the Section 275 complaint process, the federal and state antitrust laws, and state consumer protection and contract laws are individually and collectively sufficient to protect consumers, both directly and (through the protection of competition) indirectly.

Finally, the overriding public interest recognized by the 1996 Act for the alarm monitoring market, as well as other telecommunications markets, is "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the

rapid deployment of new telecommunications technologies." There is no question that forbearance will best promote competition and provide American alarm monitoring service consumers lower prices and higher quality services. On the other hand, a failure by the Commission to forbear (particularly if accompanied by a decision to adopt the interpretation of Section 275 offered by AICC) will harm consumers by preventing efficiencies and impeding the development of vigorous competition, which could lead to higher rates.

Because the three statutory criteria are met here, forbearance is called for by the statute. In addition, the requested forbearance will best conserve scarce Commission resources and avoid continued litigation on Section 275's constitutionality.

I. Introduction/Background

Ameritech entered the alarm monitoring business with the blessing of the Department of Justice and the courts supervising the administration of the AT&T Modification of Final Judgment ("MFJ"). As far back as 1991, the Department recommended the removal of the MFJ prohibition on BOCs providing information services, including alarm monitoring services.

> In advocating removal of the information services ban, the Department made the following contentions: (1) that there was no substantial risk that removal of the ban would lessen competition either through the BOCs' use of their "bottleneck" power over local loop connections (i.e., intra-exchange services) to discriminate against competing information service

> providers, or through cross-subsidization of their own information services; (2) that under current conditions regulation would play a substantial role in minimizing any anti-competitive risks; and (3) that removal of the ban would benefit consumers by enhancing competition in information services.[1]

The alarm monitoring industry strenuously opposed the removal of the MFJ prohibition, arguing (as it no doubt will here) that the BOCs could use their control of the local loop "bottleneck" to impede competition and disadvantage competitors. The Department of Justice and the District Court rejected these objections and agreed to lift the restriction.[2] The Court of Appeals reviewed the district court decision and found that "[t]he affidavits in the record offer persuasive evidence that, despite their local monopoly power, the BOCs will be unable to discriminate against competing information service providers."[3] The Court of Appeals went on to conclude that the DOJ "position had substantial factual support and was grounded in reasonable analysis." As a result, the court affirmed entirely the lifting of the restriction on BOC provision of alarm monitoring and other information services.[4] Ameritech subsequently applied for and received a waiver of the MFJ

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1 U.S. v. Western Electric Co., 993 F.2d 1572, 1578 (D.C. Cir. 1993) (citing Memorandum of the United States in Support of Motions for Removal of the Information Services Restriction).

2 See U.S. v. Western Electric Co., 767 F. Supp 308 (D.D.C. 1991).

3 993 F.2d at 1579-80.

4 Id. at 1582.

restriction on interLATA services (again, in the face of alarm industry opposition) in order to enable it to provide a full range of intraLATA and interLATA alarm monitoring services.[5]

In reliance on its ability to compete on an equal footing in the alarm monitoring industry, between 1994 and the end of 1995, Ameritech developed plans for and initiated its investment in alarm monitoring operations. In 1995, Ameritech purchased the stock of National Guardian and certain alarm monitoring accounts from Intercap. Ameritech was the only BOC to enter the alarm monitoring market during that time.

Notwithstanding the findings of the DOJ and the Court of Appeals regarding the BOCs' lack of ability to engage in undetected subsidization or discrimination against competing providers of alarm monitoring services, as a political compromise Congress enacted Section 275(a) as part of the Telecommunications Act of 1996. Section 275(a) prohibits Bell operating companies from engaging in the provision of alarm monitoring services for a period of five years after the date of enactment.[6] In recognition that Ameritech had entered

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5 See U.S. v. Western Electric Co., No. 82-0192 (D.D.C. Sept. 8, 1995).

6 **"SEC. 275 ALARM MONITORING SERVICES.**

"(a) DELAYED ENTRY INTO ALARM MONITORING.--

"(1) PROHIBITION.-No Bell operating company or affiliate thereof shall engage in the provision of alarm monitoring services before the date which is 5 years after the date of enactment of the

the business, Section 275(a)(2), however, grandfathers Ameritech's alarm monitoring services (with certain restrictions) from the ban imposed on other BOCs by Section 275(a)(1).

On June 28, 1996, SFA acquired the alarm monitoring assets of the Home Security Division of Circuit City Stores, Inc., a Virginia corporation ("Circuit City"). Circuit City's principal business involves operating retail stores specializing in audio and video equipment and appliances. In September of 1996, SFA acquired the assets of Castle Guard Security, Inc., a small company with accounts primarily concentrated in one metropolitan area. In April, 1997, SFA acquired the alarm monitoring assets of Central Control Alarm Co. and Norman Security Systems, Inc., the latter after a competitive bidding process. On June 19, 1997, after another competitive bidding process, SFA acquired the alarm monitoring assets of Masada

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Telecommunications Act of 1996.

"(2) EXISTING ACTIVITIES.–Paragraph (1) does not prohibit or limit the provision, directly or through an affiliate, of alarm monitoring services by a Bell operating company that was engaged in providing alarm monitoring services as of November 30, 1995, directly or through an affiliate. Such Bell operating company or affiliate may not acquire any equity interest in, or obtain financial control of, any unaffiliated alarm monitoring service entity after November 30, 1995, and until 5 years after the date of enactment of the Telecommunications Act of 1996, except that this sentence shall not prohibit an exchange of customers for the customers of an unaffiliated alarm monitoring service entity.

Security, Inc. On October 3, 1997, after a similar competitive bidding process, it acquired the alarm monitoring assets from six subsidiaries of Republic Security Companies Holding Co., II, Inc. On the same day SFA acquired the assets of the alarm monitoring division of Rollins, Inc., also in a competitive bidding process. These transactions will be referred to collectively herein as the "Transactions." Other than the Circuit City and Castle Guard transactions, which were of modest size, each of these acquisitions was submitted for antitrust review by the Department of Justice and Federal Trade Commission under the Hart-Scott-Rodino Act. Neither agency raised an objection to any of the Transactions.

The Alarm Industry Communications Committee ("AICC") filed motions (in some cases styled as "emergency" motions) with the Commission with respect to each of the Transactions (except the Castle Guard Security and Rollins transactions).[7] AICC in each case alleged that the particular transaction violated

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[7] The first motion was filed by AICC on August 12, 1996 and denied by the Commission in an order released on March 25, 1997. See *Enforcement of Section 275(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Against Ameritech Corporation*, CCB Pol 96-17, Memorandum Opinion and Order, FCC 97-102, at 2-3 (rel. March 25, 1997) ("Circuit City"). The *Circuit City* decision was reversed and remanded by the D.C. Circuit (*Alarm Industry Communications Committee v. FCC*, 131 F.3d 1066 (1997)) and is presently before the Commission on remand. The second motion was filed by AICC on May 1, 1997. In the Matter of Enforcement of Section 275 (a)(2) of the Telecommunications Act of 1996, CCB Pol 96-17. The third motion was filed on July 2, 1997. In the Matter of Enforcement of Section 275 (a)(2) of the Telecommunications Act of 1996, CCB Pol 97-8. The fourth motion was filed on October 8, 1997. In the Matter of Enforcement

Section 275 and requested that the Commission issue a cease and desist order pursuant to Section 312(b)(2) of the Act, directing Ameritech to rescind its purchase of the alarm monitoring assets. As Ameritech has demonstrated in its comments on those various motions, there is no legal or factual basis for granting the relief which AICC seeks, and the Commission should deny AICC's requests and terminate those proceedings.[8] Forbearance will free Commission resources for more appropriate uses by bringing to an end once and for all AICC's campaign to use the Commission to hamstring potential competitors in the alarm monitoring industry. The Commission has already wasted far too much of its limited resources on AICC's petitions seeking to deter additional competition.

I. The Requested Relief is Within the Scope of The Commission's Forbearance Authority

The Telecommunications Act of 1996 (the "1996 Act") is entitled "[a]n Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and

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of Section 275(a)(2) of the Telecommunications Act of 1996, CCB Pol 97-11. All four motions remain pending.

[8] See ,e.g., Supplemental Comments in Light of the D.C. Circuit's Decision in AICC v. FCC, CCB Pol 96-17, 97-8, 97-11 (filed April 1, 1998) ("Remand Comments").

encourage the rapid deployment of new telecommunications technologies."[9] The overarching goal of the Act, as enunciated by Congress and recognized by the Commission, is to establish "a pro-competitive, de-regulatory national policy framework" in order to make available to all Americans advanced telecommunications and information technologies and services "by opening all telecommunications markets to competition."[10]

An integral element of this pro-competitive framework is Section 10 of the Communications Act (47 U.S.C. § 160), which provides:

> (a) . . . the Commission shall forebear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its geographic markets, if the Commission determines that --
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> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
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> (3) forebearance from applying such provision or regulation is consistent with the public interest.
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> In making the public interest determination required by Section

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[9] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at *47 U.S.C.* §§ 151 et seq.

[10] Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996) (Joint Explanatory Statement).

160(a)(3), the Commission must consider whether forbearance will promote competitive market conditions.[11]

II. The Commission Should Forbear Because All Three Statutory Criteria Are Met

The language of Section 160(a) provides that the Commission "shall forebear" from applying a provision when the criteria in Section 160(a) are met. The Conference Report confirms that Section 160(a) "*requires* the Commission to forbear from applying any provision of the Communications Act" in those circumstances.[12] Because all three statutory criteria are clearly met here, forbearance is required.

A. Enforcement of Section 275 is not necessary to ensure that Ameritech's charges and practices are just, reasonable and non-discriminatory

Section 160(a)(1) directs the Commission first to determine whether enforcement of the specific provision at issue "is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory." In this case, enforcement of Section 275(a) with regard to Ameritech is unnecessary because the alarm monitoring services market in the United States is competitive and Ameritech cannot

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11 *47 U.S.C. § 160(b).*

12 H.R Conf. Rept. 104-458, 104th Cong., 2d Sess. (1996) at 184-185.

harm its competitors.

There is no question that SFA's alarm monitoring services are subject to competitive market forces in all areas, including its in-region states.[13] In addition, SFA has no market power in the national alarm monitoring market, since it has less than a 7% market share nationally.[14] SFA also lacks market power in any geographic alarm monitoring submarket.[15] The Commission has rightly and repeatedly concluded that it is "'highly unlikely' that carriers lacking market power could successfully charge rates that violate the Communications Act because an attempt to do so would prompt their customers to switch to different carriers."[16] The

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[13] See "Whose Advantage?," Security Distributing & Marketing (January 1998) at 68 (attached as Exhibit A); "The Importance of Being Number One," Security Distributing & Marketing (November 1997) at 25 (attached as Exhibit B); "More is Back," Security Distributing & Marketing (January 1997) at 64 (attached as Exhibit C).

[14] See, e.g., Rothery Storage Van Co. v. Atlas Van Lines, 792 F.2d 210, 219-221 (D.C. Cir. 1984) (holding that a firm with 6% of nationwide market lacks any market power and suggesting that a firm must have at least 30% market share to have market power). Ameritech has less than one million of the estimated fourteen to fifteen million alarm monitoring customers nationwide. See Exhibit B at 40 (SFA has 912,577 subscribers) and "Utilities Can Control Private Security," Power Value (Sept./Oct. 1997) at 54 (there are 14 million alarm security customers) (attached as Exhibit D).

[15] While it is difficult to obtain sufficient data to quantify local market share in the commercial alarm monitoring market, information about the local residential markets that is available confirms that SFA's market share does not exceed 10% and in most markets is far less than half that level.

[16] *In the Matter of Hyperion Telecommunications, Inc. Petition Requesting Forbearance*, 12 FCC Rcd 8596, 8600, 8608 ("*Hyperion Forbearance Order*"); *In the Matters of Bell Operating Companies Petitions for Forbearance from the Application*

Commission has also consistently concluded that carriers lacking market power could not engage in unjust or discriminatory practices against their customers because "market forces will generally ensure that the rates, practices, and classifications of ... carriers [that lack market power] ... are just and reasonable and not unjustly or unreasonably discriminatory."[17] Although SFA is not a telecommunications carrier under the Act, there is no reason to doubt that these fundamental economic propositions apply with equal force to it and all other firms competing in the alarm monitoring market.

Nor could Ameritech engage in unjust or unreasonably discriminatory practices against competitors. The Computer III and ONA non-structural safeguards whose efficacy was explicitly recognized by the DOJ and the MFJ Court remain in effect.[18] Those already sufficient regulatory safeguards were further strengthened by the 1996 Act, in which Congress established an augmented framework to prevent such discrimination for certain telecommunications and information services. As the

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of Section 272, 13 FCC Rcd 2627, 2644 ("*E911 Forbearance Order*"); *In the Matter of Policies and Rules Concerning the Interstate, Interexchange Marketplace*, 11 FCC Rcd 20730, 20743, 20776 (1996)("*IXC Forbearance Order*"); *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act*, 9 FCC Rcd 1411, 1478 (1994) ("*CMRS Forbearance Order*").

17 *IXC Forbearance Order*, 11 FCC Rcd at 20743; *CMRS Forbearance Order*, 9 FCC Rcd at 1478.

18 See U.S. v. Western Electric Co., 993 F.2d at 1581-2.

Commission has recognized, "[t]he Act prescribes structural and nonstructural safeguards that are intended to protect ratepayers, consumers, and competitors against the effects of potential improper cost allocation and discrimination."[19] In the alarm monitoring industry, moreover, the preexisting safeguards and the general safeguards of the 1996 Act are supplemented by the complaint procedures of Section 275(c), which provide competitors with expedited Commission review of alleged discriminatory conduct or instances of cross-subsidization.[20]

Ameritech's lack of market power alone compels the conclusion that enforcement of Section 275(a) "is not necessary to ensure that the charges . . . by, for, or in connection with" Ameritech's alarm monitoring services "are just and reasonable and are not unjustly or unreasonably discriminatory." This conclusion is reinforced by the existence of new statutory provisions and Commission rules designed to prevent unjust and discriminatory treatment of competitors.

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[19] *In the Matter of Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996* (CC Docket No. 96-150), FCC No. 96-490 (released Dec. 24, 1996), 11 FCC Rcd 17539, 17543 (¶ 4); see also 11FCC Rcd at 17632 (¶ 205); *In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services* (CC Docket No. 95-20); *In the Matter of 1998 Biennial Regulatory Review -Review of Computer III and ONA Safeguards and Requirements* (CC Docket No. 98-10), FCC No. 98-8 (released Jan. 30, 1998).

[20] Ameritech does not seek forbearance from the application of Section 275(b) or (c) to it.

B. Enforcement of Section 275(a) is not necessary for the protection of consumers

Section 160(a)(2) directs the Commission to determine whether enforcement of Section 275(a) "is not necessary for the protection of consumers." The Commission has consistently found that for the same reasons that application of a particular Communications Act provision is not necessary to ensure just and reasonable rates and charges, such application is also not necessary for the protection of consumers.[21] It should reach the same conclusion here, because market forces, the Commission's administration of the Section 275 complaint process, the federal and state antitrust laws and state consumer protection and contract laws are individually and collectively sufficient to protect consumers, both directly and (through the protection of competition) indirectly.[22]

As the Commission has recognized, where a market is fully competitive, market forces by themselves will generally be sufficient to protect

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[21] *Hyperion Forbearance Order*, 12 FCC Rcd at 8600, 8609 (paras. 7, 26); *IXC Forbearance Order*, 11 FCC Rcd at 20750, 20752; *CMRS Forbearance Order*, 9 FCC Rcd at 1411; *In the Matters of Bell Operating Companies Petitions for Forbearance From the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities ("BOC 272 Forbearance Order")*, CC Docket 96-149; DA 98-220, p. 4 and 44; *In the Matter of Petition for Forbearance From Application of the Communications Act of 1934, as Amended, to Previously Authorized Services*, 12 FCC Rcd 8408, 8410 (1997).

[22] See *IXC Forbearance Order*, 11 FCC Rcd at 20750-20751.

consumers.[23] Indeed, it is telling that although Ameritech has been in the alarm monitoring business since 1994, there have been no allegations that Ameritech has ever tried to misuse its local exchange monopoly to harm either consumers or alarm monitoring competitors.[24] It is obvious that the market forces are working. Moreover, they are supplemented by multiple, effective state and federal remedies. As an initial matter, the Commission's administration of the expedited complaint procedure of Section 275(c)[25] would by itself be sufficient to protect individual

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[23] Id. at 20750-20751; see also id. at 20752.

[24] Indeed, AICC has never spelled out how Ameritech could successfully discriminate against alarm monitoring competitors. Moreover, even if there were the potential for successful discrimination, this would not weigh against forbearance. Indeed, if there really were reason for concern about misuse of the local exchange, enforcement of a prohibition against equity or asset acquisitions (particularly out-of-region) is in no way responsive to that concern. To the contrary, Ameritech's incentive to discriminate would be greatest if it were limited to growing on a customer-by-customer basis. Theoretically and only theoretically, Ameritech might perceive a benefit to degrading signals of competing alarm companies and then attempting to enroll their customers if it had no other way to grow on a large scale. But if this forbearance petition were granted and Ameritech were permitted to engage in large scale growth through equity or asset acquisitions, it would be unnecessary and foolhardy to attempt to grow through discriminatory practices that, at best, would enable it to pick up customers one at a time. The risks and costs of a discrimination strategy would be high and the likelihood of success would be infinitesimally small, so the benefits (compared to growth through acquisition) would be non-existent.

[25] Section 275(c) creates an expedited procedure for competitors' complaints of violations of Section 275(b), which provides:

"(b) NONDISCRIMINATION.–An incumbent local exchange carrier (as defined in section 251(h)) engaged in the provision of alarm monitoring services shall–

"(1) provide nonaffiliated entities, upon reasonable request, with the network services it provides to its own alarm monitoring operations,

consumers and competitors.[26] Further protection for consumers and competitors alike in the highly unlikely event of demonstrated anticompetitive behavior by Ameritech is provided by the Commission's ability to reimpose the restrictions of Section 275(a).[27]

Both state and federal antitrust laws are also available to protect competition and, thus, consumers.[28] At the outset, any concerns about the extent to which Ameritech's acquisition of alarm monitoring assets in any particular geographic market might create undue market power that could be used to the detriment of consumers can be fully addressed through application of the federal antitrust laws. The Hart-Scott-Rodino Act (15 U.S.C. § 18 et seq.) was specifically enacted to deal with concerns arising from either asset or stock acquisitions. Under that statute, whenever a proposed transaction exceeds a certain minimum size, Ameritech or any other purchaser is required to provide a pre-closing notification to the Department of Justice and the Federal Trade Commission under the Hart-Scott-

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on nondiscriminatory terms and conditions; and

"(2) not subsidize its alarm monitoring services either directly or indirectly from telephone exchange service operations.

[26] *Hyperion Forbearance Order*, 12 FCC Rcd at 8600 (para. 7); *IXC Forbearance Order*, 11 FCC Rcd at 20750.

[27] *Hyperion Forbearance Order*, 12 FCC Rcd at 8600 (para. 7); *IXC Forbearance Order*, 11 FCC Rcd at 20752.

[28] See *CMRS Forbearance Order* at 1468.

Rodino Act. If the filing suggests the possibility of anti-competitive effects, the DOJ and FTC are entitled to investigate further by requesting additional information about the transaction. Where warranted, the DOJ and FTC can and do use the Hart-Scott-Rodino process to halt transactions deemed to present an undue risk to competition. Indeed, five of the seven Ameritech Transactions have been sufficiently large to be subject to Hart-Scott-Rodino review and the enforcement agencies have concluded that none warranted even a second request for information.[29] This tried and true pre-merger review process is fully adequate to prevent anticompetitive transactions at their inception.

In addition, the federal antitrust laws remain available to address any alleged anticompetitive behavior after transactions are consummated. The Commission, of course, shares limited Clayton Act enforcement responsibility with the DOJ.[30] In addition, the DOJ could take action on its own in the unlikely event of post-transaction anticompetitive conduct by Ameritech. Finally, private remedies, particularly treble damages and injunctive relief, will remain an option.

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[29] See attached Exhibit E, Affidavit of Gerald J. DeNicholas, at ¶ 2.

[30] See United States v. FCC, 652 F. 2d 72, 82-87 (D.C. Cir. 1980) and *In the Matter of Application of NYNEX Corp. and Bell Atlantic Corp. ("Bell Atlantic/NYNEX Transfer Order")*, 12 FCC Rcd 19985 ((No. 97-286) (released Aug. 14, 1997)), 12 FCC Rcd at 20000-20001 (¶ 29).

The panoply of federal remedies is by itself more than sufficient to protect consumers of alarm monitoring services, and those federal remedies are supplemented by state remedies. In particular, state antitrust, consumer protection and contract laws are also available to consumers who might believe they are harmed by any post-acquisition behavior of Ameritech.[31]

Technical and practical constraints reinforce the federal and state statutory and regulatory barriers to discriminatory conduct by Ameritech. Even if Ameritech were otherwise inclined to discriminate against one or more unaffiliated alarm monitoring providers, it does not possess the technical capability to engage in a systematic pattern of discrimination. Any such discrimination would have to involve either the disruption of service on monitoring loops or the disruption of notification or dispatch calls from the monitoring center to those on the customer's call list or to the local 911 public safety answering points ("PSAPs"). Discrimination on the basis of monitoring loops would be especially difficult to accomplish and, given the performance reporting to which Ameritech has agreed with this Commission and state regulatory commissions, easy to detect. The assigning, provisioning, maintenance and repair of loops and other local exchange facilities today are almost totally automated. Ameritech's mechanized systems are blind to the

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[31] See, e.g., *IXC Forbearance Order*, 11 FCC Rcd at 20751 and 20753.

identity of the customer because they assign circuit components based on one factor only - whether the components meet the technical requirements of the service. Discrimination through the disruption of outgoing notification or dispatch calls from a competitor's alarm monitoring center would be self-defeating, since it would be immediately obvious to competitors and the state and local governmental bodies that operate PSAPs. Moreover, the opportunity for such discrimination is limited and indeed for many customers is non-existent, because their alarm systems rarely if ever trigger such outgoing notification calls.

Even if Ameritech could discriminate against competing alarm monitoring firms in some other way, the likelihood that it would benefit from such discrimination is remote. There is simply no reason to assume that the end user customers victimized by the resulting service problems would switch their alarm monitoring services to SFA. A customer dissatisfied with ADT, for example, would be just as likely to switch to Entergy, Protection One or one of the other firms serving its area as it would be to switch to SFA. Thus, if any discriminatory practice were so subtle as to defy detection by customers, it would not be effective in increasing Ameritech's market share - for the customer would not know that he or she could receive better alarm monitoring service only by moving to SFA.

In addition, if Ameritech were to engage in systematic misconduct so pervasive as to impede competition in alarm monitoring services, that behavior

would be obvious to its competitors and to regulatory authorities. The court of appeals noted in United States v. Western Elec. Co., 993 F.2d 1572, 1580 (D.C. Cir. 1993), that the giant long distance companies "operating throughout the country . . . will notice any discrepancies in treatment by the various BOCs and will have the capacity and incentive to bring anticompetitive conduct to the attention of regulatory agencies." SFA's large alarm monitoring service competitors, such as ADT, Western Resources, Honeywell and Protection One, also operate throughout the country and have the same ability and incentive as long distance carriers to detect and report discriminatory conduct by Ameritech. If, on the other hand, Ameritech's conduct were so subtle as to evade detection by competitors that have every incentive to complain about any perceived deviation from statutory or regulatory requirements, that conduct would have no impact on competition in the alarm monitoring business. This point is critical, because discrimination could succeed in impeding competition only if it caused large numbers of customers to switch from other alarm monitoring firms to SFA.

In short, there are numerous reasons why the Commission should conclude that enforcement of Section 275(a) against Ameritech is simply not necessary to protect any consumer.

C. Forbearance is clearly in the public interest

The final forbearance factor is set out in Section 160(a)(3), which directs the Commission to determine whether enforcement of Section 275(a) "is not in the public interest." The overriding public interest recognized by the 1996 Act for the alarm monitoring market, as well as other telecommunications markets, is "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."[32] Moreover, in conducting its public interest analysis, the Commission is required by the statute to consider whether forbearance will promote competitive market conditions.[33]

There is no question that forbearance will best promote competition and provide American alarm monitoring service consumers lower prices and higher quality services. As the Supreme Court has noted, "unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress."[34] The new

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[32] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56; see also 11 FCC Rcd 13260, 13273 (1996) (para. 29); 11 FCC Rcd at 20743.

[33] 47 *U.S.C.* § *160*(b).

[34] Northern Pac. Ry. v. United States, 356 U.S. 1, 4 (1958).

competition that Ameritech is bringing to the alarm monitoring market provides the benefits of advances in telecommunication services to a broader group of consumers and leads to lower prices, increased consumer choice, improved customer service and product innovation.[35]

Ameritech has already demonstrated its ability to bring efficiencies and consumer benefits to the alarm monitoring services marketplace. An excellent example of these efficiencies is the reduction in equipment cost that Ameritech has been able to achieve with its increased buying power. These cost savings have been passed on to customers in the form of lower prices for security systems.[36] Ameritech has also benefitted consumers by making security services available to the mass market with SFA's innovative, no-money-down installation programs.

Ameritech has also brought technological innovation to the alarm monitoring services market. For example, in 1997 and 1998 Ameritech invested more than $13 million in the construction of a state-of-the-art alarm monitoring facility in Bradenton, Florida. This facility, one of the most advanced in the industry, has the ability to serve customers anywhere in the United States.[37] The

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35 See *IXC Forbearance Order,* 11 FCC Rcd at 20760, 20761; and *CMRS Forbearance Order*, 9 FCC Rcd at 1467; see also Remand Comments at 27-28.

36 Exhibit E, ¶ 7.

37 See Exhibit F hereto.

capabilities of the facility will allow Ameritech to provide consumers the highest quality of service at affordable prices, and with a broader range of options than has generally been available before. It is only because of the economies of scale that accompany consolidation that this investment became financially prudent.[38] Ameritech's investment in this facility would have been impractical, and in fact the facility would not have been built, if Ameritech had not been able to engage in large scale growth through asset acquisitions. Moreover, it is unlikely that any of the smaller firms from whom Ameritech has purchased alarm monitoring assets would have been willing or able to invest in such a state-of-the-art facility.

The Commission has recognized in numerous telecommunications contexts that forbearance and deregulation have the effect of speeding investment in advanced services and technological innovation. For example, the Commission freed interactive cable services from cable rate regulation and any type of Title II regulation on the theory that,"[c]able systems that now offer regulated service without competition will have an incentive to upgrade their systems with new capabilities and will have an incentive to introduce enhanced functions, such as

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[38] See Exhibit G, page 5 ; and *E911 Forbearance Order*, 13 FCC Rcd at 675837 (¶ 97) (fact that BOC would be denied economies of scale is a factor favoring forbearance).

interactivity, that are not subject to rate regulation."[39] Similarly, the Commission freed cellular services from ordinary telephony regulation in the *CMRS Forbearance Order* at least in part to encourage investment and technological innovation. The results have been exceptional: more than $37.5 billion has been invested in wireless networks[40] and competition has generated new wireless products and services, such as PCS.

There is also no question, as the discussions in this and the preceding section have shown, that forbearance will promote competitive market conditions in the alarm monitoring services market. On the other hand, a failure by the Commission to forbear (particularly if accompanied by a decision to adopt the interpretation of Section 275(a) offered by AICC) will harm consumers by preventing efficiencies and "impeding the development of vigorous competition, which could lead to higher rates."[41] Indeed, it takes only passing familiarity with

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[39] *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking,* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, 9 FCC Rec. 4119, 4131 (1994).

[40] See CTIA Pegs 12-Month Wireless Capital Investments At More Than $10 Billion, Wireless Today, October 24, 1997. CTIA, Semi-Annual Check Up Shows Wireless Industry in Vigorous Health, October 26, 1997, reprinted at http://www.wow-com.com/professional/wirelessdigest/index.cfm.

[41] *IXC Forbearance Order,* 11 FCC Rcd at 20750; *CMRS Forbearance Order* at 1475.

antitrust law to perceive that restrictions on competition of the sort included in Section 275(a) are inimical to the consumer interest in high quality, efficient, innovative and affordable service. It is not surprising, then, that none of AICC's many pleadings to date have cited consumer or public interest benefits as a justification for Section 275.

The Commission's analysis of the public interest in a forbearance proceeding, like its analysis in a transfer of control proceeding, "is informed by antitrust principles, but not limited by the antitrust laws."[42] As noted, the alarm monitoring market is a relatively new one for Ameritech, which lacks any substantial (much less a dominant) market share. Of the approximately fourteen million subscribers to alarm monitoring services, less than a million (less than 7 percent) subscribe to Ameritech's service. In 45 of the 50 states, Ameritech has no local facilities and is in a position no different than any other alarm monitoring company.[43] The same situation exists, of course, with regard to the provision of other out-of-region information and telecommunications services by BOCs. Congress recognized

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[42] *Bell Atlantic/NYNEX Transfer Order*, 12 FCC Rcd at 20003 ((¶ 32) (footnotes omitted)).

[43] Even after consummation of Ameritech's proposed merger with SBC Communications, Inc., the combined entity would have no local facilities in 37 of the 50 states.